

THE DISSOLUTION OF POLITICAL PARTIES AS SANCTIONS FOR CORRUPTION CRIMES

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Abstract: This study delves into the corporate criminal responsibility of political parties in cases of corruption and money laundering committed by their members. The intricacy lies in the challenge of attributing individual actions within political parties to the parties themselves. The primary concern investigated is the application of the dissolution sanction for political parties proven to engage in criminal acts of corruption and money laundering as a manifestation of their criminal responsibility. Employing a statutory, analytical, and conceptual approach, the research draws on legal materials derived from secondary data, encompassing primary, secondary, and tertiary legal sources. The findings reveal that the Constitutional Court possesses the authority to dissolve a political party as a corporate entity. The decision rendered by the District Court Judge serves as a pivotal reference for the government, facilitated through the attorney general and/or the appointed Minister by the President, to submit a dissolution request to the Constitutional Court. The actual execution of the dissolution rests within the purview of the Constitutional Court, aligning with its designated authority. This study sheds light on the intricate legal mechanisms surrounding the corporate criminal responsibility of political parties and underscores the role of the Constitutional Court in addressing such cases.

Keywords: *Corruption Crimes; Dissolution; Political Parties*

Abstrak: Penelitian ini mengkaji tanggung jawab pidana korporasi partai politik dalam kasus korupsi dan pencucian uang yang dilakukan oleh anggotanya. Kendala utamanya terletak pada kesulitan mengaitkan tindakan individu di dalam partai politik sebagai tindakan yang dapat dipertanggungjawabkan oleh partai politik itu sendiri. Permasalahan utama yang diteliti adalah sanksi pembubaran partai politik sebagai korporasi yang terbukti melakukan tindak pidana korupsi dan pencucian uang sebagai bentuk tanggung jawab pidana dari partai politik. Metode penelitian yang digunakan dalam studi ini adalah pendekatan statutor, analitis, dan konseptual. Materi hukum dalam penelitian ini berasal dari data sekunder, termasuk bahan hukum primer, sekunder, dan tersier. Temuan menunjukkan bahwa Mahkamah Konstitusi memiliki kewenangan untuk membubarkan sebuah partai politik sebagai entitas korporasi. Keputusan yang diambil oleh Hakim Pengadilan Negeri menjadi referensi utama bagi pemerintah, yang memfasilitasi melalui jaksa agung dan/atau Menteri yang diangkat oleh Presiden, untuk mengajukan permohonan pembubaran ke Mahkamah Konstitusi. Pelaksanaan pembubaran sepenuhnya berada di tangan Mahkamah Konstitusi sesuai dengan wewenang yang dimilikinya. Penelitian ini memberikan gambaran tentang mekanisme hukum yang rumit seputar tanggung jawab pidana korporasi partai politik dan menekankan peran Mahkamah Konstitusi dalam menangani kasus-kasus semacam ini.

Kata Kunci : *Pidana Korupsi; Partai Politik; Pembubaran*



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Introduction

Quoting Miriam Budiardjo's view, political parties are a means for citizens to participate in managing the state¹. Citizen participation in expressing opinions as individuals is sometimes not heard or even lost without a trace; therefore, the role of political parties as a container for shared aspirations processed through political parties becomes a party policy. Policies of political parties will become work programs, which are conveyed by representatives of the people (members of the People's Representative Council/DPR) to the government to become general policies to address various problems that people complain.²

The flexibility in accommodating and managing the aspirations given by the public through public policies, in overcoming the problems of the nation and state, sometimes cannot be controlled. Policies tend to be more concerned with the interests of certain party groups. The policies even depleted civil, economic, political, social, cultural and religious rights, which ultimately hampered the pace of development because they caused losses to the state or the country's economy, whose impact would be felt again by the people.³

Article 1 point 1 of Law Number 2 of 2008, in conjunction with Law Number 2 of 2011 concerning Political Parties, explains what it meant by a Political Party is an organization that is national and was formed by a group of Indonesian citizens voluntarily based on a common will and ideals the aspiration to fight for and defend the political interests of members of society, the nation, and the state, and to maintain the integrity of the Unitary State of the Republic of Indonesia

based on Pancasila and the 1945 Constitution of the Republic of Indonesia. According to Jimly Asshiddiqie, political parties are the main pillars of democracy⁴. A political party must be strong and sturdy so that the democracy it supports can also be strong. Fair legal signs are needed to regulate the procedures for establishing and dissolving political parties. Article 3 paragraph (1) Law Number 2 of 2008, in conjunction with Law Number 2 of 2011 concerning Political Parties, stipulates that political parties must be registered with the Ministry of Justice and Human Rights to become legal entities.⁵

Political parties as legal entities or corporations that can be held accountable for their actions criminally. There are currently no regulations that explicitly state this. However, Law Number 2 of 2008, as amended by Law Number 2 of 2011 Concerning Political Parties (UU), mentions political parties as legal entities in terms of their existence and status, namely based on the formulation of Article 3 of the Law, which shows political parties born as entities created by Law (*rechtspersoon*, legal entity), in other words, that political parties exist as something created by legal process or through a legal process following existing regulatory provisions. Based on the theory of legal reality which provides an understanding of the capacity and existence of a legal entity to become a legal subject created based on Law, political parties are then referred to as corporations, where corporations can carry out legal actions because existing provisions state them as legal subjects and impose an obligation which then followed by the granting of rights to legal entities, so that they then become independent legal

¹ Miriam Budiardjo, *Fundamentals of Political Science* (Jakarta: Gramedia Pustaka Utama, 2008), p. 395.

² Ridho Imawan Hanafi, "Kemunculan Dan Tantangan Partai Politik Baru Pada Pemilu 2019," *Jurnal Penelitian Politik* 15, no. 2 (December 31, 2018): 197–213.

³ Ayub Muksin, "Partai Politik Dan Sistem Demokrasi Di Indonesia," *Populis: Jurnal Sosial dan Humaniora* 3, no. 2 (December 31, 2018): 777–788.

⁴ Nadhifatus Shofia and Moch Zaidan Alamsyafi, "Eksistensi Partai Politik Di Indonesia Masa Pra Dan Pasca Kemerdekaan," *Mimbar Yustitia* 3, no. 1 (August 22, 2019): 60–74.

⁵ Doni Muhammad Dahlan, "Peningkatan Peran Partai Politik Di Indonesia: Sebuah Paradigma Baru Pasca Berlakunya Undang-Undang Nomor 2 Tahun 2011 Tentang Perubahan Atas Undang-Undang Nomor 2 Tahun 2008 Tentang Partai Politik," *Jurnal Hukum Responsif* 7, no. 2 (December 31, 2019): 40–52.

subjects/known as *person standi in judicio*.⁶

Hassbulah F. Sjawie, in his book, states that the problem of the accountability of a political party to become the perpetrator/subject of a crime is something that cannot be considered easy, considering that political parties are legal entities where the root of the problem is no crime without fault as a principle that must be met. The error in question is the attitude of the heart or men's rea which is naturally only found in natural people, so the criminal responsibility that can be requested is only for natural people.⁷

The characteristics of the criminal act of corruption usually involve more than one person. Corruption crimes can actually ensnare individuals who work together in committing corruption, and the theory of corporate criminal responsibility in corporate crimes can also ensnare political parties in this corruption case. There are several indications/allegations of corruption cases involving members of political parties whose proceeds flow to their parties, but no political party has yet been investigated or prosecuted by law enforcement.⁸

Criminal acts of corruption and money laundering criminal convictions against corporations can be carried out considering that this is done by members suspected of committing corruption or money laundering in addition to benefiting themselves and allegedly to benefit a corporation. Members of political parties who commit corruption or money laundering should be subject to criminal sanctions because they are an integral part of the political party or

Corporation itself. The Corporation is responsible for what has been done by its members in corporate responsibility, which is included in the theory of *Vicarious Liability*. As long as the employee's actions are carried out for the benefit of the Corporation, the Corporation must be responsible for the actions and the impact of those actions. In this case, the main punishment fines for corporations or legal entities, in this case, political parties.⁹

The main punishment for corporations is in the form of fines. There are also additional penalties in the form of dissolving corporations; there is also what is being debated here regarding additional penalties for dissolving corporations, in this case, political parties.¹⁰ Meanwhile, on the other hand, Article 24C of the 1945 Constitution of the Republic of Indonesia and Law Number 2 of 2008 concerning Political Parties state that the Constitutional Court has the authority to dissolve political parties. Based on this, there is an overlapping authority between the District Court Judge and the Constitutional Court regarding dissolving political parties. For this reason, it is necessary to conduct a study related to the dissolution of political parties as corporations that commit acts of corruption and money laundering, so that they comply with the Constitution and applicable laws and regulations.¹¹

Literature Review

A democratic country requires political parties and general elections (Pemilu). Political parties are increasingly important because democracy requires the authority of

⁶ Hariyanti Hariyanti, Cecep Darmawan, and Iim Siti Masyitoh, "Peran partai politik dalam meningkatkan partisipasi politik kader perempuan melalui pendidikan politik," *Jurnal Civics: Media Kajian Kewarganegaraan* 15, no. 1 (May 31, 2018): 74–85.

⁷ Hassbulah F. Sjawie, *Corporate Criminal Responsibility for Corruption Crimes Cet 1* (Jakarta: Prenada Media Group, 2015), p. 63.

⁸ Wicipto Setiadi, "Korupsi Di Indonesia Penyebab, Hambatan, Solusi Dan Regulasi," *Jurnal Legislasi Indonesia* 15, no. 3 (November 21, 2018): 249–262.

⁹ Muhammad Badri, "Analisis Sanksi Dalam Tindak Pidana Korupsi," *Jurnal LEX SPECIALIS*, no. 19 (November 14, 2017): 38–47.

¹⁰ Uyat Suyatna, "Evaluasi Kebijakan Tindak Pidana Korupsi Di Indonesia," *Sosiohumaniora* 22, no. 3 (November 7, 2020): 325–333.

¹¹ Purwoto Patardo Yosua Andreas Naibaho*, "Kebijakan Hukum Pidana Dalam Upaya Meningkatkan Peran Serta Masyarakat Dalam Pencegahan Dan Pemberantasan Tindak Pidana Korupsi," *Diponegoro Law Journal* 5, no. 4 (October 11, 2016): 1–15.

citizens to govern and is part of the rights of citizens to participate in determining public policies and leaders. However, political parties are created not only to rule. Political parties also channel collective will—representing the interests of various groups in society. Concerning public policy, there are complete limitations regarding political parties. As stated by Mark N. Hagopian, a political party is an organization formed to influence the form and character of public policy within the framework of certain ideological principles and interests through the direct practice of power or popular participation in elections.¹²

Political parties reflect a democratic state which is believed to be a prerequisite for the life of a modern state. Without specifying which interests and by whom, it is clear that political parties are interest-channeling institutions,¹³ channeling the interests of the people and those in power. As an interest-channeling institution,¹⁴ political parties are used for communication in two directions: from top to bottom and from bottom to top. If this can be implemented correctly, the function of political parties as political socialization, political participation, political communication, articulation of interests, aggregation of interests, and policymaking, can run well to realize the expected political

development.¹⁵

Political parties are so important that it is assumed that there is no democracy without political parties. This statement is stated quite often. This is because political party institutions are essential pillars of building a democratic system in addition to the election, executive, legislative, judiciary, and free press institutions.¹⁶ It is no longer possible to implement democracy in modern democratic countries using the direct democracy model. Many obstacles are faced if direct democracy is to be implemented. Therefore, the implementation of democracy is carried out by representatives of the people who sit as members of the People's Representative Body.¹⁷

Method

This study is legal research. The preparation of legal research needs to use an approach,¹⁸ this approach aims to be able to obtain information from various aspects regarding the issues being discussed.¹⁹ In this research, the approach used is a statutory approach (*Statue Approach*)²⁰ or a juridical approach, namely research on legal products.²¹ This statutory approach examines all laws and regulations related to the research to be

¹² Febriasnyah Kurniawan and Retno Sari Handayani, "Masalah Pelaksanaan Fungsi Partai Politik Dan Dampaknya Terhadap Konsolidasi Demokrasi Di Indonesia," *Jurnal Demokrasi dan Politik Lokal* 4, no. 2 (October 28, 2022): 128–145.

¹³ Vincentius Setyawan, "Pancasila As A Philosophical Basis Of Law Formation In Indonesia," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (March 15, 2023): 1–8.

¹⁴ khairudin Khairudin, "The Practice of Buying and Selling Black Market Goods on The Perspective of Islamic Economic Law," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (2022): 77–85.

¹⁵ Ellya Rosana, "PARTAI POLITIK DAN PEMBANGUNAN POLITIK," *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam* 8, no. 1 (2012): 135–150.

¹⁶ N. F. N. Efriza, "Eksistensi Partai Politik Dalam Persepsi Publik [The Existence of The Political Parties in Public Perception]," *Jurnal*

Politica Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional 10, no. 1 (May 31, 2019): 17–38.

¹⁷ Zainal Abidin Saleh, "Demokrasi Dan Partai Politik," *Jurnal Legislasi Indonesia* 5, no. 1 (November 29, 2018): 56–80.

¹⁸ Meta Riskia, "Implementation Of Mudharabah Financing On Baitul Maal According Majelis Ulama Indonesia," *Journal of Nusantara Economy* 1, no. 1 (December 9, 2022): 1–13.

¹⁹ Desy Maryani et al., "A Model of Implementing Restorative Justice Perspective of Trong Yowari Traditional Jurisdiction, Jayapura Regency," *Nusantara: Journal Of Law Studies* 2, no. 1 (March 27, 2023): 40–51.

²⁰ Muhamad Imam Muddin, "Inheritance System Mayorat on the Komerling Tribe in Urf Perspective," *Nusantara: Journal Of Law Studies* 1, no. 1 (December 16, 2022): 21–32.

²¹ Bahder Johan Nasution, *Legal Research Methods* (Bandung: Mandar Maju, 2008), p. 92.

studied.²² This statutory approach will open up opportunities for researchers to study whether there is consistency and suitability between one Law and another.²³ The writing of this Law also uses an analytical approach (*Analytical approach*),²⁴ This Approach is carried out by looking for meaning in legal terms contained in legislation,²⁵ so that researchers gain new meanings or meanings from legal terms²⁶ and test their practical application.²⁷ The next approach is conceptual (*Conceptual Approach*)²⁸ because this research will start by identifying existing medical principles or views to generate new ideas.²⁹ This conceptual approach is also used to understand and study the concepts of criminal responsibility so that the concept of political party criminal responsibility as a form of Corporation will be obtained.

Result and Discussion

Theory of Corporate Criminal Liability

Corporate criminal responsibility, basically three theories underlie responsibility for corporate criminal acts, namely:

a. Identification Theory, Direct Liability Doctrine and Alter Ego Theory

Direct criminal responsibility or "*Direct Liability*" (which also means *non vicarious*) states that the senior employees of the

Corporation, or people who get a delegation of authority from them, are viewed with a specific purpose and especially, as the Corporation itself, with the result that their actions and mental attitudes are seen as directly causing these actions, or are the mental attitudes of the Corporation. The scope of criminal acts that corporations may commit following this principle is more comprehensive than if it is based on the "*vicarious*" theory of doctrine.³⁰

The most emphasized identification theory is that the perpetrator must be a person who truly represents a corporation.³¹ Even in his principles and systems, he is not a shareholder but a professional administrator. The perpetrators referred to are officials, administrators, and employees with managerial levels whose duties are not under orders or directions from other people. The owner of power in this Corporation has the authority to represent the Corporation.³²

b. Strict Liability

Strict Liability is a criminal responsibility that does not require any guilt on the perpetrator's part against one or more of the *actus reus*. This *strict Liability* is a liability without *fault*. The perpetrator of a criminal act can already be punished if he has committed a prohibited act as defined in the Law without further looking at the inner

²² Kusdiyana, Samsudin, and Muhammad Wildan Nur Akmal, "Accuracy of Qibla Direction Mosque at Rest Area Toll Road on the Qibla Jurisprudence Perspective," *Nusantara: Journal Of Law Studies* 2, no. 1 (March 19, 2023): 31–39.

²³ Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana, 2010), p. 93.

²⁴ Riskia, "Implementation Of Mudharabah Financing On Baitul Maal According Majelis Ulama Indonesia."

²⁵ Robi Musthofa Al Ghazali, "Boarding House Rent Refunds During Covid 19 Based On Sharia Economic Law," *Journal of Nusantara Economy* 1, no. 1 (December 10, 2022): 38–47.

²⁶ Muhammad Fitri Adi, "Hadhonah Rights of Children (Not Mumayyis) Based on Compilation of Islamic Law and Child Protection Act," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (March 15, 2023): 9–22.

²⁷ Mukti Fajar and Yulianto Achmad, *Dualism of Normative and Empirical Legal Research*,

(Yogyakarta: Student Library, 2010), p. 34.

²⁸ Wahyu Ziaulhaq, "Buying and Selling Used Clothing: An Islamic Economy Law Perspective," *Journal of Nusantara Economy* 1, no. 1 (December 10, 2022): 29–37.

²⁹ Muhammad Kurtubi, "Child Playing Online Game in the Sadd Al-Zari'ah's Perspective," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (December 14, 2022): 9–20.

³⁰ Rodliyah Rodliyah, Any Suryani, and Lalu Husni, "Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) Dalam Sistem Hukum Pidana Indonesia," *Jurnal Kompilasi Hukum* 5, no. 1 (2020): 191–206.

³¹ Kurniawan and Handayani, "Masalah Pelaksanaan Fungsi Partai Politik Dan Dampaknya Terhadap Konsolidasi Demokrasi Di Indonesia."

³² Suhartati et al, *Anatomy of Corporate Crime* (Surabaya: Revka Petra Media, 2018), p. 102.

attitude of the perpetrator. It is emphasized that a criminal act that is *strict Liability* only requires the assumption or knowledge of the perpetrator; it is enough to demand criminal responsibility from him. There is no question of the existence of *mensrea* because the main element of *strict Liability* is *actus reus* (deeds), so what must be proven is *actus reus*, not *menrea*.³³

c. *Vicarious Liabilities*

vicarious liability doctrine is a corporate criminal responsibility doctrine adopted from Civil Law.³⁴ The basic understanding of the theory of *vicarious Liability* is emphasized on the responsibility of a corporate owner for all actions taken by his employees.³⁵ Yudi Krismen thinks that a *superior response* is applied if a corporate agent commits a crime within the scope of his work to provide benefits to the Corporation. The thing that should be underlined in understanding the theory of *vicarious Liability* is that the perpetrator of the action is not limited to whomever that person is as long as that person has a working relationship in the Corporation.³⁶

Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes

Article 1 number 10: "a corporation is a group of people and assets that are organized, either as a legal entity or not as a legal entity." Article 6 paragraph (1): "if the crime of money laundering as referred to in Article 3, Article 4, and Article 5 is committed

by a corporation, the sentence shall be imposed on the corporation and the person controlling the corporation".

Article 6 paragraph (2): "Criminals are imposed on corporations if the crime of money laundering:

- a. carried out or ordered by the personnel controlling the Corporation;
- b. carried out in the context of fulfilling the aims and objectives of the Corporation;
- c. carried out following the duties and functions of the actor or giver of the order; And
- d. carried out to provide benefits to the corporation".³⁷

Article 9 paragraph (1): "if the Corporation is unable to pay the fine as referred to in Article 7 paragraph (1), the fine shall be replaced by confiscation of the Corporation's Assets or Corporate Controlling Personnel whose value is the same as the fine sentence imposed". Article 9 paragraph (2): "if the sale of the confiscated Corporation's Assets as referred to in paragraph (1) is insufficient, imprisonment in place of fines shall be imposed on the Corporate Controlling Personnel taking into account the fines already paid".³⁸

Law No. 31 of 1999 Juncto Law No. 20 of 2001 concerning Eradication of Corruption Crimes

Article 1 point 1: "A corporation is a group of people and assets organized either as a legal entity or not as a legal entity." Article 2 paragraph (1): "Any person who unlawfully commits an act of enriching himself or

³³ Padil Padil, "Karakteristik Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi," *Jurnal IUS Kajian Hukum dan Keadilan* 4, no. 1 (April 5, 2016), accessed March 28, 2023, <https://jurnalius.ac.id/ojs/index.php/jurnalIUS/article/view/280>.

³⁴ Aulia Ali Reza, *Corporate Responsibility in the Draft Criminal Code* (Jakarta: Institute for Criminal Justice Reform, 2015), p. 19.

³⁵ Yusi Tasika and Giyarsi Giyarsi, "The Effectiveness of the Discussion Method to Increase Students' Understanding and Activeness in Islamic Religious Education Subjects," *Nusantara Education* 1, no. 1 (December 15, 2022): 81–93.

³⁶ Ahmad Muchlis, "Penegakan Hukum Terhadap Tindak Pidana Korupsi Dengan Kerugian Negara Yang Kecil Dalam Mewujudkan Keadilan," *Fiat Justisia: Jurnal Ilmu Hukum* 10, no. 2 (2016), accessed March 28, 2023, <https://jurnal.fh.unila.ac.id/index.php/fiat/article/view/652>.

³⁷ Warih Anjari, "Penerapan Pemberatan Pidana Dalam Tindak Pidana Korupsi," *Jurnal Yudisial* 15, no. 2 (February 17, 2023): 263–281.

³⁸ Slamet Haryadi, "Rekonstruksi Tujuan Pemidanaan Dalam Pemberantasan Tindak Pidana Korupsi," *PRANATA HUKUM* 7, no. 2 (July 31, 2012), accessed March 28, 2023, <http://jurnal.ubl.ac.id/index.php/PH/article/view/174>.

another person or a corporation that can harm the state's finances or the state's economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."

Article 3 Any person who, to benefit himself or another person or a corporation, abuses the authority, opportunities, or facilities available to him because of his position or position which can harm the state's finances or the state's economy, shall be punished with imprisonment for life or imprisonment for a minimum 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).³⁹

Article 20 (1) If a criminal act of corruption is committed by or on behalf of a corporation, criminal charges and convictions can be made against the Corporation and its management. (2) Corruption is committed by a corporation if the crime is committed by people based on work relations or other relationships, acting within the corporate environment alone or together. (3) If a criminal charge is made against a corporation, management represents the Corporation. (4) The management representing the Corporation may be represented by another person, as referred to in paragraph (3). (5) The judge may order the management of the Corporation to appear before the court himself and may also order the management to be brought before a court hearing. (6) If a criminal charge is made against a corporation, the summons to appear and delivery of the summons shall be conveyed to

the management at the residence of the management or where the management has an office. (7) The principal sentence that can be imposed on a corporation is only a fine, provided that the maximum penalty is added 1/3 (one-third).⁴⁰

Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations

Article 1 number 1: "Corporation is a group of people and assets that are organized, either a legal entity or not a legal entity."

Article 1 number 7: "Dissolution is the dissolution of a company due to a decision of the GMS/EGMS, or the period of establishment determined by the articles of association has ended, or based on a court decision, or because the company's business license has been revoked, thus requiring the company to carry out liquidation following statutory provisions."⁴¹

Article 1 number 8: "Criminal acts by corporations are criminal acts for which corporations can be held criminally responsible following the laws governing corporations."

Article 1 number 10: "Management is a corporate organ that carries out corporate management following the articles of association or laws that are authorized to represent the corporation, including those who do not have the authority to make decisions, but in reality can control or participate in influencing corporate policies or participate in deciding policies in a corporation that can qualify as a crime."

Article 3: "A criminal act by a corporation is a crime committed by a person based on a working relationship, or based on another relationship, either individually or jointly acting for and on behalf of the corporation

³⁹ Fuzi Narin Drani, "Penyelesaian Korupsi dengan menggunakan Restoratif Justice," *Jurnal Penelitian Hukum De Jure* 20, no. 4 (December 10, 2020): 605–617.

⁴⁰ Fina Rosalina, "Daluwarsa Tindak Pidana Korupsi Melalui Sudut Pandang Teori Hukum: Optimalisasi Pengembalian Kerugian Keuangan

Negara," *YUSTISIA MERDEKA : Jurnal Ilmiah Hukum* 8, no. 2 (November 14, 2022): 29–36.

⁴¹ Hariman Satria, "Pembuktian Kesalahan Korporasi dalam Tindak Pidana Korupsi," *Integritas : Jurnal Antikorupsi* 4, no. 2 (December 10, 2018): 25–53.

within and outside the corporate environment." Looking at the provisions of Article 3 PERMA Number 13 of 2016, in terms of corporate criminal responsibility, Indonesia itself uses the identification theory and the *Vicarious Liability theory*. Article 4 point 1: "Corporations can be held criminally liable following the provisions on corporate crime in the laws governing corporations."⁴²

Article 25

(1) Judges sentence the Corporation in the form of principal punishment and additional punishment.

(2) The principal sentence that can be imposed on a Corporation, as referred to in paragraph (1), is fine.

(3) Additional penalties are imposed on Corporations following the provisions of laws and regulations.⁴³

Dissolution of Political Parties

Arrangements regarding the dissolution of political parties vary from country to country depending on how political parties are positioned and the national interests that must be protected. In the new countries of the Asia-Africa region, according to Weiner and Lapalombara, political party arrangements are generally related to two elements of national integration, namely, the issue of control over all national territory and the issue of loyalty. Sam Issacharoff supports the views of Wiener and Lapalombara by saying that the constitutional basis in each state is stated as something that cannot be changed, so based on this principle, it becomes a benchmark for determining boundaries that political parties may not violate. These limits can be in the form of certain principles that determine which

parties are democratic and which are not. Another limitation is national integrity.⁴⁴

The authority to dissolve political parties in Indonesia itself belongs to the Constitutional Court based on Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia that the Constitutional Court has the authority to try at the first and last levels whose decision is final to review laws against laws Basic, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties and decide disputes about the results of general elections.

Meanwhile, the regulation regarding the dissolution of political parties in Indonesia is regulated in Law Number 2 of 2008 concerning Political Parties. Article 41 of the Law on Political Parties explains that three things make a political party disband: dissolving itself on its own decision, merging with another political party, or being dissolved by the Constitutional Court. Based on the provisions of Article 41 of Law Number 2 of 2008 concerning Political Parties, those who have the authority to dissolve political parties are the political parties themselves and the Constitutional Court.⁴⁵

Based on Article 48 paragraph (3) of Law number 2 of 2008 concerning Political Parties, the Constitutional Court can dissolve political parties against political parties that have been suspended for violating the provisions of Article 40 paragraph (2) of Law number 2 of 2008 concerning Political Parties and committed another violation of Article 40 paragraph (2) of Law number 2 of 2008 concerning Political Parties. Article 40 paragraph (2) Law number 2 of 2008

⁴² Roni Saputra, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi (Bentuk Tindak Pidana Korupsi Yang Merugikan Keuangan Negara Terutama Terkait Dengan Pasal 2 Ayat (1) UU PTPK)," *Jurnal Cita Hukum* 3, no. 2 (2015): 269–288.

⁴³ Sunarto -, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi," *Spektrum Hukum* 15, no. 1 (April 19, 2018): 44–70.

⁴⁴ Ahmad Nasution, "PEMBUBARAN PARTAI POLITIK DI INDONESIA," *"Dharmasiswa" Jurnal*

Program Magister Hukum FHUI 1, no. 2 (July 18, 2021), <https://scholarhub.ui.ac.id/dharmasiswa/vol1/iss2/5>.

⁴⁵ Rifandy Ritonga, "Pembubaran Partai Politik Terhadap Sistem Demokrasi Di Indonesia," *PRANATA HUKUM* 10, no. 2 (July 31, 2015), accessed March 28, 2023, <http://jurnal.ubl.ac.id/index.php/PH/article/view/605>.

concerning Political Parties itself regulates the prohibition against political parties from carrying out activities that are contrary to the 1945 Constitution of the Republic of Indonesia and statutory regulations or carrying out activities that endanger the integrity and security of the Unitary State of the Republic of Indonesia.

The Constitutional Court can also dissolve political parties that violate Article 40 paragraph (5) of Law number 2 of 2008 concerning Political Parties as stipulated in Article 48 paragraph (7) of Law number 2 of 2008 concerning Political Parties. Article 40, paragraph (5) of Law number 2 of 2008 concerning Political Parties themselves, regulates the prohibition against political parties from adhering to and developing and spreading the teachings or understanding of communism/Marxism-Leinism.⁴⁶

The dissolution of political parties is also regulated in the TPPU Law and TPPK Law as an additional sanction considering that political parties are legal entities, so political parties are included as legal subjects in the TPPU Law and TPPK Law as corporations. Thus, if you look at the *vicarious liability theory* of corporate crime, any political party that commits a crime of money laundering or corruption can be subject to additional criminal sanctions in the form of dissolving the political party. Regulations regarding the dissolution of political parties as criminal sanctions in the form of additional penalties for political parties that commit money laundering and corporate crimes then indirectly give authority to court judges to dissolve political parties. The authority to dissolve a political party as a corporation is proven to have committed a crime; between the TPPU Law, the TPPK Law, and the Political Parties Law, there is an overlapping authority in dissolving political parties between court judges and the Constitutional

Court.⁴⁷

According to the principle of *lex superior derogat legi inferiori*, hierarchically higher laws and regulations overrule lower hierarchically laws and regulations. The order of the hierarchy of laws and regulations in Indonesia is regulated in Article 7, paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, which states that the types and hierarchy of laws and regulations can be seen in the table below :

Table 1. hierarchy of laws and regulations

No	Types of Legislation	Legislative hierarchy
1	1945 Constitution	First
2	MPR Assembly Decree	Second
3	Constitution	Third
4	Government Regulation in Lieu of Law	Fourth
5	Government regulations	Fifth
6	Presidential decree	Sixth
7	(Provincial) Regulations	Seventh
8	Regional Regulation (City)	Eighth

Based on this hierarchy and referring to the principle of *lex superior derogat legi inferiori*, the authority to dissolve political parties belongs to the Constitutional Court, which is regulated in the 1945 Constitution, while the authority to dissolve political parties belongs to the court judges as regulated in the TPPU Law and the TPPK Law. On the other hand, court judges in deciding a case cannot be separated from the theory of authority, which contains teachings about the types and sources of authority. Types of authority include bound authority and free authority. Meanwhile, the sources of authority come from attribution, delegation, and mandates. Authority that is attributive (original), namely the granting of government authority by legislators to government organs (*attribute toekenning van een bestuursbevoegdheid door een*

⁴⁶ Finradost Yufan Madakarah, Fifiiana Wisnaeni, and Ratna Herawati, "Perkembangan Pengaturan Pembubaran Partai Politik Dalam Sistem Ketatanegaraan Republik Indonesia," *Diponegoro Law Journal* 6, no. 2 (April 20, 2017): 1–13.

⁴⁷ Made Shannon Tjung and A. A. Ngurah Oka Yudistira Darmadi, "Mekanisme Pembubaran Partai Politik Yang Terbukti Melakukan Tindak Pidana Korupsi Di Indonesia," *Kertha Semaya : Journal Ilmu Hukum* 10, no. 3 (January 30, 2022): 572–582.

watgever aan een bestuurorgaan).⁴⁸ This attributive authority is also permanent or remains as long as the Law regulates it. Based on this theory of authority, court judges also have the right to dissolve political parties, bearing in mind that the TPPU Law and TPPK Law authorize judges to impose criminal penalties on dissolving corporations where political parties are part of what is meant by the Corporation.

Referring to the principle of *lex superior derogat legi inferiori* and the theory of authority, court judges can decide on additional criminal penalties in the form of arbitrary dissolution of corporations as their authority. However, specifically for political parties, decisions to disband corporations are only limited to recommendations that the government will later forward through the Attorney General. Moreover, Ministers assigned by the President, who then act as petitioners as stated in Article 3 paragraph (1) of Constitutional Court Regulation No. 12 of 2008 concerning Procedural Procedures for the Dissolution of Political Parties, which is then forwarded to the Supreme Court and which decides the dissolution of the party. The future of politics is the Constitutional Court. Thus, the procedure for dissolving political parties follows the 1945 Constitution and Constitutional Court Regulation Number 12 of 2008 concerning Procedural Procedures for Dissolving Political Parties.⁴⁹

The government can request the dissolution of a political party proven to have committed a crime. The dissolution by the government follows the provisions of Article 3 paragraph (1) of Constitutional Court Regulation No. 12 of 2008 concerning Procedural Procedures for the Dissolution of Political Parties "The Petitioner is the government represented by the Attorney General and the Minister assigned by the President at that time." The government requests the dissolution of this political party

to the Constitutional Court because the authority to disband it is still the authority of the Constitutional Court following the mandate of the 1945 Constitution.

Conclusion

The Constitutional Court can only carry out the dissolution of a political party as a corporation following the authority mandated by the 1945 Constitution, with the dissolution mechanism as stipulated in Constitutional Court Regulation No. 12 of 2008 concerning Procedures for Dissolving Political Parties. Political parties as corporations that have been proven to have committed criminal acts in the form of corruption or money laundering should be able to be disbanded because they have violated the provisions of the Law, both the Political Party Law, the Corruption Law, the Money Laundering Law, so that both individuals and political parties as a corporation that is involved in committing a crime can be subject to criminal responsibility respectively. In deciding the dissolution of a corporation as a political party that commits a crime, judges at the District Court cannot disband directly even though the decision is *inkrah*. The court decision handed down by this judge is used as a reference for an application by the government through the attorney general and/or the Minister appointed by the President to submit a request for its dissolution to the constitutional court. So that the implementation of the execution of dissolution is in the hands of the Constitutional Court according to its authority.

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⁴⁸ Fradhana Putra Disantara et al., "Rekonstruksi Subjectum Litis: Upaya Pembubaran Partai Politik secara Konstitusional," *SPEKTRUM HUKUM* 19, no. 1 (October 26, 2022), accessed March 28, 2023, [http://jurnal.untagsmg.ac.id/index.php/SH/article/](http://jurnal.untagsmg.ac.id/index.php/SH/article/view/2262)

[view/2262](http://jurnal.untagsmg.ac.id/index.php/SH/article/view/2262).

⁴⁹ Vito Vivaldi Mahardika and Maria Madalina, "Kewenangan Mahkamah Konstitusi Dalam Pembubaran Partai Politik," *Sovereignty* 1, no. 2 (September 30, 2022): 322–329.

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